

Opinion in opinion
COPY

116

August 20, 1957

NEW HAMPSHIRE LAW LIBRARY

Mr. Harold K. Davison, Chairman
Public Utilities Commission
State House Annex
Concord, New Hampshire

OCT 01 1998

CONCORD, N.H.

Dear Sir:

In a letter of August 6, 1957, you referred to RSA 38:12 and to RSA 362:4, as amended by Laws 1957, Chapter 33, and you inquired if a municipal water utility serving less than thirty consumers is subject to the jurisdiction of the Public Utilities Commission because of such service. We answer in the negative.

It is our view that RSA 38:12 is not intended to subject municipal utilities to regulatory control to which they would not be subject without it. It is simply declaratory of the law set forth in substantive form elsewhere.

The jurisdiction of the Public Utilities Commission runs generally, under the provisions of Title XXXIV of the Revised Statutes Annotated, to public utilities. RSA 362:2 defines the term "public utility." This section sets forth, expressly, that a municipal corporation operating within its corporate limits is not deemed a public utility, and, by unmistakable implication of language, that a municipality operating outside its limits is a public utility. The conclusion that would otherwise be reached as the result of any operation whatsoever outside its limits by a municipal utility may be affected, however, by the provisions of RSA 362:4. A utility operation which would otherwise qualify as a public utility will not, this section provides, if it comprise a "water system or part thereof, if the whole of such water system shall supply a less number of consumers than thirty."

Since it is only with respect to operations outside the municipality that the municipal utility may become a "public utility" in any case, it seems reasonable to construe

C O P Y

Mr. Harold K. Davison -- 2.

August 20, 1957

the language "the whole of such water system" as limited to that part of the water system which is legally subject to be or to become a public utility, i.e., that part which lies outside the borders of the municipal corporation owning the utility operation. If the system so constituted serve less than thirty consumers, the municipally-owned water utility is not a public utility, and the operation is not subject to the regulatory jurisdiction of the Commission.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW:w